

JUN 23 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLARENCE WALKER,

Defendant - Appellant.

No. 06-10733

D.C. No. CR-04-40106-1-SBA

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Saundra B. Armstrong, District Judge, Presiding

Argued and Submitted June 12, 2008  
San Francisco, California

Before: SCHROEDER and N.R. SMITH, Circuit Judges, and WALKER<sup>\*\*</sup>, Senior  
Circuit Judge.

Federal prisoner Clarence Walker appeals his convictions for causing the  
failure to file currency transaction reports (“CTRs”) in violation of the Bank

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable John M. Walker, Jr., Senior U.S. Circuit Judge for the  
Second Circuit, sitting by designation.

Secrecy Act, 31 U.S.C. § 5324(a)(1), (d)(1), and conspiracy to do the same in violation of 18 U.S.C. § 371. Walker argues that (1) the district court erroneously denied his motion for mistrial because a juror who was ultimately dismissed biased other jurors by commenting on the merits of the case before deliberations; and (2) his convictions were obtained through perjurious testimony in violation of the due process clause.

The district court did not abuse its discretion by denying Walker's motion for mistrial. The district court removed the juror who, before hearing any evidence, commented on Walker's guilt; the court questioned every juror about the comments, and asked the jurors who heard the comments to verify that they could impartially consider the evidence and apply the presumption of innocence. See United States v. Armstrong, 909 F.2d 1238, 1244 (9th Cir. 1990) (affirming a district court's denial of a motion for mistrial where the district court questioned each juror about a pre-deliberation comment and its possible effect on each juror's deliberations). The court's inquiry was very thorough.

Walker's pro se supplemental brief raises a due process challenge. It fails because he did not show that his conviction was obtained through false testimony. See United States v. Zuno-Arce, 339 F.3d 886, 889 (9th Cir. 2003) (holding that to prevail on a claim that his conviction was obtained through the knowing

introduction of perjurious testimony, the defendant must show that the testimony was actually false).

**AFFIRMED.**